It is suggested that the evidence of the witness that she pointed out the appellant was inadmissible.

Learned counsel relies on the Federation case of *Meelamchan & Anor.* v. *Public Prosecutor* [1] which approved the judgment of the Supreme Court of India in the case of *Ramkishan* v. *Bombay State* [2], which held that a physical gesture of identification is indistinguishable, for the purposes of provisions analogous to section 121(1) of our Criminal Procedure Code, from statements made to or in the presence of a police officer at a parade. There is a contrary decision by the Court of Criminal Appeal of Singapore in *Rex* v. *Shum Soo* [3] in which it was said: "Evidence of a physical act seen by the witness is always admissible."

However, we do not propose, having regard to the facts, to decide this case upon that point. We would merely add that we see no reason to disagree with Mr. David Marshall's observation that, if the law is correctly stated in the Indian Supreme Court case, then the present position as to the evidence concerning what happens at an identification parade is anomalous to the point of absurdity. It surely cannot have been the intention of the legislature to exclude evidence of the fact that a witness at an identification parade signified his recognition of the person involved by a gesture such as a pointing finger; or even by standing in front of the person involved and looking towards him.

In the absence of any authoritative ruling of the Judicial Committee of the Privy Council, the present anomalous position, assuming the Indian judgment referred to to be correct, would seem to be a matter for correction by the legislature.

Be that as it may, the present case can, in our opinion, be determined upon the facts apart from the identification parade.

According to the evidence, which the learned trial Judge accepted and which there is clearly evidence on the record to support, the appellant was caught red-handed, in that there was an immediate chase for some hundreds of yards from the house in question after which he was apprehended by one Tan Kheng Seng, a police constable; while his two companions successfully made their escape.

The learned trial Judge rejected the defence of an alibi and we would merely observe that, having carefully considered the record, we are of opinion that any Judge or jury must inevitably have rejected the defence as false.

For these reasons, irrespective of the admission of evidence as to what occurred at the identification parade, the appeal is dismissed and the conviction affirmed.

No argument was addressed to us on the question of sentence, which seems to us to be appropriate. The sentence, therefore, also is affirmed.

Appeal dismissed.

Solicitors: *David Marshall.*

Re SALVAGE ENGINEERS LIMITED

[O. C. J. (Ong J.) November 9, 1962]

[K.L. — Originating Summons No. 200 of 1962]

Company Law — General meeting — Quorum required of two persons present in person or by proxy — Meeting of one person alone with proxy for another — Invalid meeting.

Practice and procedure — Costs — Company winding-up — Abortive.

The articles of S.E. Ltd., provided that the quorum for a general meeting shall be two persons present in person or by proxy and entitled to vote. It was also provided that a person who is not a member cannot be appointed by a proxy.

R, one of the only two members of the company, granted a proxy to the other, K authorising the latter to vote at a general meeting, *inter alia*, for a resolution to wind-up the company voluntarily. K purportedly held a meeting at which he was the only person present and he purported to pass the said and other resolutions authorised by the proxy. To cure a defect in the appointment of liquidators K made an application to Court and R applied for leave to intervene and questioned the validity of the meeting on the ground that a one-man meeting was not a properly constituted meeting under the articles.

Held: (1) the articles did not authorise a one-man meeting even though the only person present held a proxy from another member of the company;

(2) R was to pay the costs of proceedings and to indemnify and re-imburse K all costs and expenses properly incurred by the latter in the abortive winding-up.

Cases referred to:—

(1) *Sharp* v. *Dawes* (1892), 2 Q.B.D. 26.
(2) *Re Sanitary Carbon Co.* [1877] W.N. 233.
(3) *Re Prain & Sons Ltd.* [1947] S.L.T. 289; S.C. 325.
(4) *East* v. *Bennett Brothers Ltd.* [1911] 1 Ch. 163.
(5) *Re Express Engineering Works Ltd.* [1920] 1 Ch. 466.
(6) *Re Oxted Motor Co. Ltd.* [1921] 3 K.B. 32.
(7) *Parker & Cooper Ltd.* v. *Reading* [1926] Ch. 975.
(8) *Salomon* v. *Salomon & Co.* [1897] A.C. 22.

ORIGINATING SUMMONS.

J. S. H. Skrine for the applicant.

T. H. A. Potts for the intervener.

Cur. Adv. Vult.

Ong J.: Salvage Engineers Limited is a private company limited by shares formed on September 19, 1960. The total issued share capital is $210,000 of which G. A. D. Keet holds $35,000 and J. J. Raper holds $175,000 in ordinary shares of $1 each, all fully paid up. These two shareholders are both directors.

About July or August, 1962 Raper left the Federation of Malaya and Singapore for Europe for business reasons, and while in the United Kingdom he appeared to have decided not to return to Malaya. On August 24, 1962 he executed an instrument of proxy before a Notary Public in London, appointing Keet as his proxy to vote for him and on his behalf at an extraordinary general meeting of the company, to be held within 14 days thereof, to vote in favour of the following resolutions, namely, (a) to put the company into voluntary liquidation as soon as possible and

(b) to request Messrs. Turquand Youngs & Co. to accept appointment as liquidators.

On August 28, Messrs. Rodyk & Davidson, solicitors for Raper, wrote to Keet enclosing the proxy in his favour and draft minutes of the resolution with a request that the resolution be passed as early as possible. On September 7 an extraordinary general meeting, attended by Keet representing himself and as proxy for Raper, passed the following special resolutions:

(1) that all members of the Company entitled to notice of this meeting being present in person or by proxy such notice be and is hereby waived;

(2) that the Company be wound up voluntarily;

(3) that Messrs. Turquand Youngs & Co. be appointed liquidators.

A copy of the resolution was duly filed with the Registrar of Companies; a declaration of solvency executed by the two directors was also filed pursuant to section 223 of the Companies Ordinance and a notice published in the Federation Government *Gazette* pursuant to section 219.

On being informed of their appointment Messrs. Turquand Youngs & Co. called attention to section 270 of the Companies Ordinance, which declares void any appointment of a body corporate or firm as liquidator. Ensuing correspondence showed: (1) that three named partners in Turquand Youngs & Co. consented to being appointed jointly and severally as liquidators "either by the Company (should it so resolve in General Meeting) or by the court . . . provided that the validity of the liquidation is established beyond doubt"; and (2) that on September 28 Raper's solicitors wrote to Turquand Youngs & Co. confirming that they had received their client's instructions not to contest the validity of the resolution filed with the Registrar of Companies, Kuala Lumpur, for voluntary winding up of the company: A copy of this letter was also sent to Keet's solicitor.

As a result this application by way of *ex-parte* originating summons arose, being an application by Keet for an order pursuant to section 242 of the Companies Ordinance that Mr. F. W. Westworth, Mr. W. B. Bellam and Mr. J. E. C. Cooy, Chartered Accountants, all being partners of Turquand Youngs & Co., be appointed liquidators of the company in substitution for the void appointment of the firm.

In the meantime, however, Raper had returned to Singapore intending to take up permanent residence there. He has now changed his mind and wants the company to continue in business. He says that liquidation will cause him irreparable damage and he is willing to submit to any terms as to costs which the Court may deem fit to impose. He accordingly has applied by summons in chambers for leave to intervene in the proceedings, praying for a declaration that the resolution to wind up the company is invalid, null and void and of no effect, alternatively, for an order staying the winding up. I have heard both applications together and adjourned the same for argument in open court.

Article 13 of the articles of association of this company provides that: "The quorum for a General Meeting shall be two members present in person or by proxy and entitled to vote." And by Article 73: "No person shall be appointed a proxy . . . who is not a member of the Company . . . . ."

The sole question, therefore is, whether or not, I ought to follow the line of decisions in *Sharp* v. *Dawes* [1], *In re Sanitary Carbon Company* [2] and *Re Prain & Sons Ltd.* [3]. In the last-named case the Lord President (Cooper) said:

"In this petition for confirmation of reduction of capital the learned reporter has drawn our attention to the fact that at the company meeting, at which the special resolutions were submitted for approval, only one person was present, although that person was present in more than one capacity. He was there as an individual shareholder; he was there as a trustee in two different trusts which held shares; and he was there as a proxy for another individual shareholder. But notwithstanding the multiple capacities in which he was present, the fact remains that the 'meeting' consisted of him and of him alone.

The next point to be noted is that by article 48 of the articles of association of this company it is provided that two or more members present in person *or by proxy* shall be a quorum for a general meeting; and the submission was pressed upon as that, as there were notionally present at this meeting two persons in person or by proxy, though actually only one individual, the requirements of the articles and of the law were satisfied. I am not prepared to accept that view.

Since the case of *Sharp* v. *Dawes*, the view has been held, following the opinion of Cleridge L.C.J., and his colleagues, that a 'meeting' is an assemblage where two or more persons meet, and that, unless the word 'meeting' can have assigned to it some special meaning, a meeting cannot be composed of one individual. It is true that in a later case in 1911, the case of *East* v. *Bennett Brothers Ltd.* [4] Warrington J. found it possible to distinguish the case of *Sharp* v. *Dawes*, *supra*, and the later case of the *Sanitary Carbon Co.*, under circumstances in which the consent of the preference shareholders of a company was required, and all the preference shares were held by one person. But though he found it possible to make that distinction in the case of a class meeting, he cast no doubt upon the principle laid down in *Sharp* v. *Dawes*, *supra*.

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Putting decisions aside, I turn next to the text book writers on the subject of company practice; and, so far as they reveal, the rule in *Sharp* v. *Dawes* has held the field down to the date of the publication of the latest editions of these works."

On the other hand there is *East* v. *Bennett Brothers Ltd.* above referred to by Lord President Cooper, where it was held by Warrington J. that the word "meeting" in the memorandum and articles must be taken to have been used not in the strict sense, but as applicable to the case of a single shareholder. In addition, cases have been cited to show that, while the members, as a body, can only act through a general meeting, nevertheless where all the shareholders assent, the formalities of a meeting need not be complied with, and it is not necessary for them to come together in a meeting: (see 6 *Halsbury*, 3rd Ed., p. 329-330; *Re Express Engineering Works Ltd.* [5]; *Re Oxted Motor Co. Ltd.* [6] and *Parker & Cooper* v. *Reading* [7]).

After anxious consideration of the various cases on both sides of what appears to be a rather thin dividing line, I feel that I am not at liberty to give an interpretation to the word "meeting" which is against the weight of authority. In *Oxted Motors*, where the only two shareholders of the company met and passed a resolution for voluntary winding up, the irregularity was in regard to the statutory requirements as to notice which all the shareholders present at a meeting were held entitled to waive. In *Express Engineering Works* all the five shareholders of the company met at a board meeting and resolved on the issue of debentures; by the articles of association they were prohibited as directors from voting thereon, but it was held that the meeting might be considered a general meeting of shareholders and it was competent to all the shareholders to waive all formalities as regards notice thereof. And in *Parker and Cooper*, Astbury J. based his judgment on a passage in the judgment of Lord Davey in *Salomon* v. *Salomon & Co.* [8] to the effect that a company is bound in a matter which is *intra vires* by the unanimous agreement of all the corporators. Finally, in *East* v. *Bennett Brothers Ltd.* one member with all the shares of a class, namely, the preference shareholders, was held to constitute the quorum for a meeting of that class. In the first two cases above-mentioned there were actual meetings of all the shareholders together and the Court was able to treat them as general meetings. In *Parker and Cooper* the Court held that, though there was no semblance of a formal meeting, yet the unanimous asset of all the individual corporators to a transaction that was *intra vires* the company made it unnecessary that they should hold a meeting in one room or one place to express that assent simultaneously. There the debenture was issued with the assent of every shareholder and the question was whether the liquidator ought to succeed in obtaining a declaration that the debenture and the resolution authorising it were inoperative, so that the creditors might get an advantage of the defendant Reading's £1,750 and deprive him of the security on which he made that advance. The answer of Astbury J. was in these words:

> "If company law enables the entirety of the corporators to ratify an irregular *intra vires* transaction why should this not protect an honest *bona fide* transaction entered into for the benefit of the company."

In the present case, no question arises as to the validity of past acts, but the question is raised *in limino* whether a one-man meeting constituted a proper quorum. I am less reluctant to answer in the negative because no injustice will be caused to anyone by my decision, which accords with authority. There can be no estoppel against the operation of a statute. Nor can any argument *ab inconvenienti* be entertained, since subsection (2) of section 116 provides a solution.

I accordingly give leave to Raper to intervene and make the declaration as prayed.

He will have to pay all the costs of the applicant of and incidental to these proceedings and indemnify and reimburse his co-director all costs and expenses properly incurred by the other in the abortive winding up of the company.

Order accordingly.

Solicitors: *Bannon & Bailey; Rodyk & Davidson.*

THE PRUDENTIAL ASSURANCE CO. LTD. v. KOH NAM YONG

[O. C. J. (Rose C.J.) November 14, 1962]

[Singapore — Originating Motion No. 32 of 1962]

Practice and Procedure — Appeal — Leave to — Clerks Employment Ordinance, 1957, s.36 — Industrial Relations Ordinance, 1960, ss.40 and 50(1) — Choice of alternative remedies — Applicant to pursue path chosen by respondent — Costs.

Employment — Collective agreement — Registered under Industrial Relations Ordinance, 1960, s.23 — Dispute arising from — Choice of alternative remedies.

The respondent, an employee of the applicants made a claim before the Commissioner for Labour for additional sums of money he alleged to be due to him under section 36 of the Clerks Employment Ordinance for work on public holidays. The sum involved was under $200. The Assistant Commissioner for Labour who heard the case found in favour of the employee. By this application the applicants sought leave of the Court to appeal against the decision of the Assistant Commissioner notwithstanding that the amount involved was under $200. (see section 54 of the Clerks Employment Ordinance and section 20(1) of the Courts Ordinance). The applicants' grounds were that the issue involved many persons other than the parties and they sought to pursue the appeal as a test case.

The respondent was a member of a union that had entered into a collective agreement with the employer; this collective agreement was registered pursuant to section 23 of the Industrial Relations Ordinance (see Singapore *Gazette Supplement* No. 197 of September 14, 1962). This agreement contained provision that clerks will be remunerated for work on gazetted holidays in accordance with the Clerks Employment Ordinance. It also contained provision that any dispute between the union and the company shall be referred to the President of the Industrial Arbitration Court.

The respondent resisted the application for leave to appeal on the ground that the matter should be referred to the President of the Industrial Arbitration Court by reason of the referee clause. A properly registered collective agreement was deemed to be an award of the Industrial Arbitration Court by virtue of section 24 of the Industrial Relations Ordinance. It was contended for the respondent that an interpretation of the collective agreement (and of any statute incorporated into it) should properly be made under section 40 of the Industrial Relations Ordinance to the Industrial Arbitration Court.

It was also argued for the respondent that should the applicants be given leave to appeal they should be ordered to pay the respondents costs of the appeal irrespective of the result on the appeal. It was further contended that appeal to the High Court would entitle the appellants to carry the matter up to the Privy Council involving the respondent in expense beyond his limited means.

Held: (1) the matter being one of importance and the respondent having elected to proceed by one of two